

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

JUSTIN E. FAIRFAX,

Plaintiff,

v.

**CBS CORPORATION and CBS
BROADCASTING INC.,**

Defendants.

Case No. 1:19-cv-01176-AJT-MSN

**SECOND DECLARATION OF MATTHEW E. KELLEY IN SUPPORT OF
MOTION BY DEFENDANTS' MOTION FOR ATTORNEYS' FEES AND COSTS**

I, Matthew E. Kelley, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an associate in the law firm of Ballard Spahr LLP, am counsel of record in this action for Defendants CBS Corporation and CBS Broadcasting Inc., and have personal knowledge of the facts stated herein. I submit this declaration in support of Defendants' Motion for Attorneys' Fees and Costs.

2. Attached hereto as Exhibit A is a true and correct copy of a transcript of the video, "Justin Fairfax accuser calls for a public hearing on assault claims," broadcast on April 1, 2019 on *CBS Evening News*, available at <https://www.cbsnews.com/video/justin-fairfax-accuser-calls-for-a-public-hearing-on-assault-claims/>. A recording of the video is attached as Exhibit 7 to the Kelley Declaration in support of Defendants' Motion to Dismiss.

3. Attached hereto as Exhibit B is a true and correct copy of a printout of the article, *Attorney says unnamed witness can corroborate Virginia lieutenant governor's story in rape allegation*, WTVR (July 10, 2019), <https://wtvr.com/2019/07/10/justin-fairfax-witness/>.

4. Attached hereto as Exhibit C is a true and correct copy of a printout of the article, Ed O’Keefe and Stephen Sanchez, *Virginia Lt. Gov. Justin Fairfax calls for criminal investigation into sexual assault allegations against him*, CBS News (June 13, 2019), <https://www.cbsnews.com/news/virginia-lt-gov-justin-fairfax-wants-prosecutors-to-launch-criminal-investigation-into-allegations-against-him/>.

5. Attached hereto as Exhibit D is a true and correct copy of a printout of the article, Ryan Nobles, *Attorney for Virginia Lt. Gov. Fairfax pushes for criminal investigation into allegations against him*, CNN (June 14, 2019), <https://www.cnn.com/2019/06/13/politics/justin-fairfax-sexual-assault-allegations/index.html>.

6. Attached hereto as Exhibit E is a true and correct copy of a letter dated August 8, 2019, captioned “DEMAND LETTER AND NOTICE TO CEASE AND DESIST” from Sara Kropf, counsel for Lt. Gov. Justin Fairfax, addressed to Laura Franco, Executive Vice President and General Counsel of CBS.

7. Attached hereto as Exhibit F is a true and correct copy of a printout of a statement dated February 4, 2019, posted to Lt. Gov. Justin Fairfax’s Twitter feed: Justin Fairfax (@FairfaxJustin), TWITTER (Feb. 3, 2019, 11:55 p.m.), <https://twitter.com/FairfaxJustin/status/1092330792817229826>.

8. Attached hereto as Exhibit G is a true and correct copy of the video embedded in the article, Camilo Montoya-Galvez, *Justin Fairfax, Virginia lieutenant governor, denies sexual assault allegation*, CBS NEWS (Feb. 4, 2019), <https://www.cbsnews.com/news/justin-fairfax-virginia-lieutenant-governor-denies-sexual-assault-allegation/>. The video includes Lt. Gov. Justin Fairfax’s comments to journalists at the Virginia Capitol on February 4, 2019. A CD containing a copy of this recording will be physically filed with the Office of the Clerk of Court

upon issuance of an order granting Defendants' Motion for Leave to File Audiovisual Exhibits.

9. Attached hereto as Exhibit H is a true and correct copy of the video, *Parallels between Fairfax and Kavanaugh*, CBS NEWS (Feb. 11, 2019), available at <https://www.cbsnews.com/video/sexual-assault-claims-against-justin-fairfax-draw-parallels-to-kavanaugh-accusations/>. A CD containing a copy of this recording will be physically filed with the Office of the Clerk of Court upon issuance of an order granting Defendants' Motion for Leave to File Audiovisual Exhibits.

10. Attached hereto as Exhibit I is a true and correct copy of a printout of the article, Theresa Vargas, *Va. Lt. Gov. Justin Fairfax denies sex assault allegation from 2004*, WASH. POST (Feb. 4, 2019), https://www.washingtonpost.com/local/va-lt-gov-justin-fairfax-denies-sex-assault-allegation-from-2004/2019/02/04/05fb0f6c-272b-11e9-ad53-824486280311_story.html.

11. Attached hereto as Exhibit J is a true and correct copy of a printout of the article, Dean Mirshahi and Amy Simpson, *Lt. Gov. Fairfax claims political rivals helped release initial sexual assault allegation*, WAVY (Oct. 3, 2019), <https://www.wavy.com/news/politics/virginia-politics/lt-gov-fairfax-claims-political-rivals-helped-release-initial-sexual-assault-allegation/>. The video embedded on the webpage with this article is the video in Exhibit K hereto.

12. Attached hereto as Exhibit K is a true and correct copy of the video broadcast on October 3, 2019 on WRIC-TV in Richmond, Virginia, and embedded on the webpage, *Lt. Gov. Fairfax claims 'political rivals' helped release 1st sexual assault allegation in CBS lawsuit*, WRIC (Oct 3, 2019), <https://www.wric.com/news/politics/lt-gov-fairfax-claims-political-rivals-helped-release-initial-sexual-assault-allegation/>. A CD containing a copy of this recording will be physically filed with the Office of the Clerk of Court upon issuance of an order granting Defendants' Motion for Leave to File Audiovisual Exhibits.

13. Attached hereto as Exhibit L is a true and correct copy of a printout of a tweet retweeted by Lt. Gov. Justin Fairfax's Twitter account on October 3, 2019: 8News WRIC Richmond (@8NEWS), TWITTER (Oct. 3, 2019, 3:28 p.m.), <https://twitter.com/8NEWS/status/1179885945174331398>.

14. Attached hereto as Exhibit M is a true and correct copy of a printout of a tweet retweeted by Lt. Gov. Justin Fairfax's Twitter account on October 3, 2019: Amy Simpson (@amysimpson8news), TWITTER (Oct. 3, 2019, 11:05 a.m.), <https://twitter.com/amysimpson8news/status/1179819748785307648>.

15. Attached hereto as Exhibit N is a true and correct copy of a printout of a tweet posted on Lt. Gov. Justin Fairfax's Twitter feed: Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 4, 2019, 6:36 p.m.), <https://twitter.com/FairfaxJustin/status/1180295560500264960>.

16. Attached hereto as Exhibit O is a true and correct copy of a video recording of an interview with Lt. Gov. Justin Fairfax on the online talk show *Roland Martin Unfiltered* on October 15, 2019, available at <https://www.youtube.com/watch?v=KnAYKcRkdbg>. A CD containing a copy of this recording will be physically filed with the Office of the Clerk of Court upon issuance of an order granting Defendants' Motion for Leave to File Audiovisual Exhibits.

17. Attached hereto as Exhibit P is a true and correct copy of a printout of a tweet retweeted by Lt. Gov. Justin Fairfax's Twitter account on October 15, 2019: Roland S. Martin (@rolandmartin), TWITTER (Oct. 15, 2019, 3:25 p.m.), <https://twitter.com/rolandmartin/status/1184233815083909120>.

18. Attached hereto as Exhibit Q is a true and correct copy of a printout of a tweet retweeted by Lt. Gov. Justin Fairfax's Twitter account on October 15, 2019: Roland S. Martin (@rolandmartin), TWITTER (Oct. 15, 2019, 3:31 p.m.),

<https://twitter.com/rolandsmartin/status/1184235477068648450>.

19. Attached hereto as Exhibit R is a true and correct copy of a printout of a tweet posted on Lt. Gov. Justin Fairfax's Twitter feed: Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 16, 2019, 5:41 a.m.), <https://twitter.com/FairfaxJustin/status/1184449376787271680>.

20. Attached hereto as Exhibit S are true and correct copies of printouts tweets posted on Lt. Gov. Justin Fairfax's Twitter feed on October 27, 2019:

- a. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 27, 2019, 7:59 p.m.),
<https://twitter.com/FairfaxJustin/status/1188651348792958976>.
- b. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 27, 2019, 8:18 p.m.),
<https://twitter.com/FairfaxJustin/status/1188656366413635584>.
- c. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 27, 2019, 8:25 p.m.),
<https://twitter.com/FairfaxJustin/status/1188657995602976768>.
- d. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 27, 2019, 8:31 p.m.),
<https://twitter.com/FairfaxJustin/status/1188659579883790342>.
- e. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 27, 2019, 8:39 p.m.),
<https://twitter.com/FairfaxJustin/status/1188661483900682241>.
- f. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 27, 2019, 8:48 p.m.),
<https://twitter.com/FairfaxJustin/status/1188663883965325312>.

21. Attached hereto as Exhibit T are true and correct copies printouts of tweets posted on Lt. Gov. Justin Fairfax's Twitter feed on October 28, 2019:

- a. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 28, 2019, 4:12 p.m.),
<https://twitter.com/FairfaxJustin/status/1188956647093350400>.
- b. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 28, 2019, 4:13 p.m.),

<https://twitter.com/FairfaxJustin/status/1188957089319849985>.

- c. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 28, 2019, 4:15 p.m.),
<https://twitter.com/FairfaxJustin/status/1188957423949795329>.
- d. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 28, 2019, 4:18 p.m.),
<https://twitter.com/FairfaxJustin/status/1188958294133661696>.
- e. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 28, 2019, 4:24 p.m.),
<https://twitter.com/FairfaxJustin/status/1188959818024919040>.
- f. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 28, 2019, 4:27 p.m.),
<https://twitter.com/FairfaxJustin/status/1188960432805044227>.
- g. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 28, 2019, 4:29 p.m.),
<https://twitter.com/FairfaxJustin/status/1188960922376855560>.
- h. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 28, 2019, 4:31 p.m.),
<https://twitter.com/FairfaxJustin/status/1188961435877031936>.
- i. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 28, 2019, 4:32 p.m.),
<https://twitter.com/FairfaxJustin/status/1188961784838918145>.
- j. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 28, 2019, 4:34 p.m.),
<https://twitter.com/FairfaxJustin/status/1188962268576436224>.
- k. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 28, 2019, 4:35 p.m.),
<https://twitter.com/FairfaxJustin/status/1188962476819472385>.
- l. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 28, 2019, 4:37 p.m.),
<https://twitter.com/FairfaxJustin/status/1188963025673437185>.
- m. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 28, 2019, 4:41 p.m.),
<https://twitter.com/FairfaxJustin/status/1188963959656865799>.

- n. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 28, 2019, 4:42 p.m.),
<https://twitter.com/FairfaxJustin/status/1188964353896337409>.
- o. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 28, 2019, 4:43 p.m.),
<https://twitter.com/FairfaxJustin/status/1188964563926114304>.
- p. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 28, 2019, 4:48 p.m.),
<https://twitter.com/FairfaxJustin/status/1188965904886980609>.
- q. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 28, 2019, 4:52 p.m.),
<https://twitter.com/FairfaxJustin/status/1188966713120956416>.
- r. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 28, 2019, 4:55 p.m.),
<https://twitter.com/FairfaxJustin/status/1188967446549614594>.
- s. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 28, 2019, 5:05 p.m.),
<https://twitter.com/FairfaxJustin/status/1188970096519237633>.
- t. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 28, 2019, 5:07 p.m.),
<https://twitter.com/FairfaxJustin/status/1188970585952526338>.
- u. Justin Fairfax (@FairfaxJustin), TWITTER (Oct. 28, 2019, 5:09 p.m.),
<https://twitter.com/FairfaxJustin/status/1188971043299438594>.

I declare under penalty of perjury pursuant to the laws of the United States of America
that the foregoing is true and correct.

Dated: November 1, 2019

/s/ Matthew E. Kelley
Matthew E. Kelley